WILLIAM L. SHORT, JR.

IBLA 74-3 Decided January 24, 1974

Appeal from a decision of the Oregon State Office, BLM, rejecting homestead entry application, OR 10727 (Wash.).

Affirmed.

Homesteads (Ordinary): Applications--Homesteads (Ordinary): Lands Subject to--Survey of Public Lands: Generally

> When lands have been granted according to an official plat of survey and for a total area equal to that shown on a duly returned and approved plat of survey and when no question has been raised about the situs of any survey monument delineating the boundaries of the sections involved, there is no hiatus within these sections and a homestead entry application premised on the existence of such a hiatus is properly rejected.

APPEARANCES: William L. Short, Jr., pro se.

OPINION BY MR. HENRIQUES

William L. Short, Jr., appeals from a decision dated June 4, 1973, whereby the Oregon State Office, Bureau of Land Management, rejected his homestead entry application-petition OR 10727 (Wash.) for a strip of land along the north edge of lot 6 section 21 and lot 6 section 22, T. 30 N., R. 1 W., W.M., Jefferson County, Washington, for the reason that the official land status records of the Bureau show that all land in said sections 21 and 22 has been transferred into non-Federal ownership so none remains available for homestead entry.

Appellant reiterates his assertion that a hiatus exists between the former Port Townsend Military Reservation and lots 2 and 3 section 21, and lots 2 and 5 section 22, because of the position of some stone markers which he assumes are official survey markers on the boundary

of the former military reservation, now the north edge of lot 6 section 21 and lot 6 section 22.

The record shows that the plat of survey of T. 30 N., R. 1 W., W.M., was approved February 21, 1859. Port Townsend Military Reservation was approved by the President on January 20, 1859, for land within sections 21, 22, 27, 28 and 33, T. 30 N., R. 1 W. The northern boundary of the military reservation was established 3 chains north of the east-west mid-section line in sections 21 and 22, and the western boundary was established 26.50 chains west from the section line between sections 21 and 22. [The location of other boundaries of the reservation is not germane to this appeal.] Because of the location of the northern boundary of the military reservation 3 chains north from the mid-section line, the adjoining subdivisions were returned as "lots" on the plat of survey. In section 21, the gross area returned by the survey was 639.50 acres, of which 115.62 acres were in the military reservation and 523.87 acres were open to entry and disposition under the public land laws; in section 22, the gross area returned was 274.50 acres, of which 202.20 acres were in the military reservation and 72.30 acres were open to entry. Prior to 1890, all of the non-military reservation lands in sections 21 and 22 were entered and patented, an area of 596.17 acres. In 1953 control over the Port Townsend Military Reservation was returned to the Department of the Interior. A supplemental plat of survey for T. 30 N., R. 1 W., W.M., accepted May 8, 1957, designated the former military reservation land in section 21 as lot 6, containing 115.63 acres, and in section 22 as lot 6, containing 202.20 acres. Subsequently these lands were transferred to the State of Washington by patents in 1958 and in 1967.

While it is the general rule that monuments, natural or artificial, prevail over calls for course, distance or quantity, Marco Island, 51 L.D. 322 (1926), no question has been raised herein about the situs of any monument delineating the boundaries of sections 21 or 22, T. 30 N., R. 1 W. The lands surveyed under the rectangular system of public land surveys employed by the Bureau of Land Management are identified on the ground by fixed monuments established in the survey.

Appellant argues that stone monuments marked "US" on all four sides which must have been installed to mark the north boundary of the military reservation are not located in the proper line, vis-a-vis the quarter section corner between sections 21 and 22 so that an hiatus must exist between the former military reservation and the patented lands. He has not, however, submitted any probative evidence in support of his argument. The monuments described by appellant were not placed by the cadastral surveyor who made the official survey of this township, nor do

they resemble corner monuments established by the General Land Office. The field notes of the original survey of Port Townsend Military Reservation indicate that the western boundary of the reservation in section 21 was established and monumented on a line 13.08 chains east from the quarter section corner between sections 21 and 28, running north 42.17 chains to the northwestern corner of the reservation, from which the northern boundary was run on a line east therefrom. At a point 26.50 chains east from the corner, a monument was established 3 chains north from the quarter section corner between sections 21 and 22, from thence the line was continued east 43.20 chains further to a point on the meander line of Point Townsend Bay, as established by the 1859 survey.

These lines now form the boundaries of lot 6 section 21, and lot 6 section 22, where the boundaries of the lots are not the established section lines or the meander line. The amended lotting designated on the plat of survey accepted May 8, 1957, are not marked on the ground as it is the general rule that sections are not subdivided in the field by the BLM cadastral engineers.

To recapitulate, the township was surveyed in 1859 and the areas returned by the surveyor general were 639.50 acres in section 21, and 274.50 acres in section 22. There has been no other official survey of these lands. A supplemental plat of survey was drafted to designate the area formerly occupied by Port Townsend Military Reservation. The importance, and legal significance, of the plats and field notes is set out in Alaska United Gold Mining Co. v. Cincinnati-Alaska Mining Co., 45 L.D. 330, 336 (1916), as follows:

> It has been repeatedly held by both State and Federal courts that plats and field notes referred to in patents may be resorted to for the purpose of determining the limits of the area that passed under such patents. In the case of Cragin v. Powell (128 U.S. 691, 696), the Supreme Court said
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> > It is a well settled principle that when lands are granted according to an official survey of such lands, the plat, itself, with all its notes, lines, descriptions and landmarks, becomes as much a part of the grant or deed by which they were conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself.

Land patents have been issued by the Bureau of Land Management, or by its predecessor the General Land Office, for every aliquot subdivision comprising sections 21 and 22, the total area of these patents equals the total area of the sections returned by the surveyor general on the plat for T. 30 N., R. 1 W., W.M. The entire area of these two sections has ceased to be public land and there is no hiatus between any of the subdivisions of these sections. The decision below is correct in its rejection of the subject application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

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Douglas E. Henriques, Member

I concur:

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Joan B. Thompson, Member

I concur in the result:

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Joseph W. Goss, Member